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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT
Notification

The 2nd February, 2024

No. 13/1/9739-HII(2)-2024/1801.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **14/2019** dated **06.11.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SUDHIR KUMAR SRIVASATAVA S/O OF LATE SH. RAM KUBER, RESIDENT OF HOUSE NO. 2461, SECTOR 39-C, CHANDIGARH. (Workmen)

AND

1. M/S DAINIK BHASKAR CORPORATION LIMITED, PLOT NO. 280, SARKHEJ GHANDINAGAR HIGHWAY, NEAR YMCA CLUB, MAKARBA, AHMEDABAD, GUJARAT - 380051 THROUGH ITS MANAGING DIRECTOR.
2. M/S DAINIK BHASKAR CORPORATION LIMITED, CHANDIGARH UNIT, PLOT NO.11-12, GROUND FLOOR, DAKSHIN MARG, SECTOR 25, CHANDIGARH - 160036 THROUGH ITS ASSISTANT GENERAL MANAGER (HR & ADMN.) (Management)

AWARD

1. Vide Endorsement No.13/1/9639-HII(2)-2019/15610 dated 19.09.2019 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the claim application filed by Sudhir Kumar Srivasatava (*hereinafter referred "claimant"*) to the M/s Dainik Bhaskar Corporation Limited & Another (*hereinafter referred "management"*) under Section 17(1) of the Working Journalists & Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (*hereinafter in short referred "Act 1955"*) in following words :-

"Whether the arrears of revision of pay to Sh. Sudhir Kumar Srivasatava, Son of late Sh. Ram Kuber, Resident of House No.2461, Sector 39-C, Chandigarh (Applicant/ Claimant) AND (1) M/s Dainik Bhaskar Corporation Limited, Plot No.280, Sarkhej

(281)

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Ghandinagar Highway, Near YMCA Club, Makarba, Ahmedabad, Gujarat through its Managing Director (2) M/s Dainik Bhaskar Corporation Limited, Chandigarh Unit, Plot No.11-12, Ground Floor, Dakshin Marg, Sector 25, Chandigarh through its Assistant General Manager (HR & Admn.) (Management) according to the recommendations of the Majithia Wage Board and also as per the direction of the Hon'ble Supreme Court of India under The Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provision Act, 1955 and in compliance of the orders dated 28.04.2015, 12.01.2016, 14.03.2016, 23.08.2016 passed by the Hon'ble Supreme Court of India in CCP No.128/2015 and 129/2015 AND Writ Petition (Civil) 246/2011 dated 07.02.2014; if so, to what effect and to what relief he is entitled to, if any ?"

2. Upon notice, the claimant-workman appeared through his Representative Shri Amit Sharma. Statement of claim was filed on 26.03.2021.

3. Briefly stated the averments of claim statement are that the claimant was working as Senior Executive with Dainik Bhaskar Newspaper having its registered office at Sector 25, Chandigarh. On account of revision of pay and other allowances accrued on the acceptance of the recommendations of the Majithia Wage Board which were accepted by the Government of India and notified in the Gazette of India on 11.11.2011, a substantial amount is due from Dainik Bhaskar / employer which is denied. On account of fact that a large number of person are employed in the various newspapers and periodical being published in India and such newspaper or periodical establishment had devised its own way of employing persons to run its working, the Government of India constituted the Press Commission to enquire into the conditions of employment of working journalists. The Press Commission made certain recommendations for improvement and regulation of such service conditions by means of legislation. Accordingly, The Working Journalists (Conditions of Service) and Miscellaneous Provisions Bill was introduced in the Parliament. Consequently, on 20.12.2015 the Act 1955 was enacted to regulate certain conditions of service including minimum period of notice, gratuity, provident fund, settlement of industrial dispute, leave with pay, hours of work and minimum wages of the Working Journalists and the other persons employed in the Newspaper Establishments. From the harmonious joint reading of the provisions of the Act 1955, it is apparent that the Central Government has been competent to fix and revise the wages of the journalists and other employees having been governed by the Act 1955. A procedure has been laid down for fixing and revising rate of wages for which a mandate is casted upon the Central Government to constitute a Wage Board in the manner prescribed in it, which shall examine all the relevant factors like cost of living, the prevalent rate of wages for comparable employment etc. for the ascertainment of the rate of wages and thereafter present its recommendation to the Central Government. On the receipt of such recommendation by the Wage Board, the Central Government is also competent to accept, reject and alter any of the recommendations as may deemed fit. Consequently, the Central Government shall notify the recommendations by way of an Award in the official Gazette of India. In pursuance to an exercise undertaken by Department of Labour and Employment, Union of India under Section 9 of Act, 1955, the purpose of enabling the Central Government to fix or revise rate of wages for the working journalists and non-journalists newspaper employees, a Wage Board was constituted under the Chairmanship of Hon'ble Mr. Justice G. R. Majithia (Retd.) and the Wage Board was commonly known as Majithia Wage Board. After examining all the relevant factors regulating the revision of pay and affording opportunity to all the affected parties, the Majithia Wage Board finally submitted its recommendations on 31.12.2010 to the Union of India. On 25.10.2011 the Union of India accepted the same in toto without any modification. The said recommendations were further notified in the official Gazette vide notification dated 11.11.2011. On the publication of the recommendation of the Majithia Wage Board by way of an Award vide Gazette Notification dated 11.11.2011, various newspaper establishments and media houses vide W.P. (C) No.538 of 2011 had made a challenge

under Article 32 of the Constitution of India before the Hon'ble Supreme Court of India alleging Act 1955 being ultra-virus as it infringes the fundamental rights guaranteed under Article 14, 19(1)(a) and 19(1)(g) of the Constitution of India. There was also a challenge to the validity of notification dated 11.11.2011 issued by the Union of India. The Bunch of aforesaid petitions remained pending for hearing before the Hon'ble Apex Court for 3 years and ultimately while disagreeing with the contentions raised by the newspaper establishments and media houses, the Hon'ble Apex Court dismissed all the petitions vide its judgment dated 07.02.2014 while holding that the recommendations of Majithia Wage Board are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under Article 32 of the Constitution of India. Despite the dismissal of the Writ Petitions challenging the validity of Act 1955 and notification dated 11.11.2011, and further directions of the Hon'ble Apex Court for payment of arrears, no compliance was being made by the news agencies. The employees had also taken up their issue before the management No.1 & 2 for payment of revised wages and arrears as per the directions of the Hon'ble Apex Court, however, they were told that a review application have been preferred by them and further course of action would be taken up after its adjudication. Another order dated 13.10.2017 was passed by the Hon'ble Apex Court clarifying the previous judgment dated 19.06.2017 to the extent that the disputes referred to adjudication under Section 17(2) of the Act 1955, will be disposed of by the concerned Labour Court / Industrial Tribunal as expeditiously as possible preferably within six months of the reference being made.

4. It is further averred that the claimant was appointed as an Executive Admin in the Dainik Bhaskar Newspaper on 06.03.2007. The salary of the claimant was fixed @ ₹6,500/- per month including all perks and allowances. After passage of almost 4 years of his appointment as Executive, the claimant was promoted as Senior Executive in the year 2010. The services of the claimant were being regulated under the Act 1955. On minute perusal of the notification, it is apparent that employees have been categorised in groups and as such the claimant falls within the ambit of working non-journalists being 'Executive' w.e.f. 06.03.2007 and later on Senior Executive w.e.f. 01.04.2011 which is mentioned in Group 2 of the schedule II(b) of Grouping of Non-journalists Newspaper Employees - Administrative Staff. The request of the claimant and others was kept pending on the ground that the matter was being considered by the management and would take a decision expeditiously. Despite passage of more than 4 years of dismissal of Writ Petitions by the Hon'ble Apex Court, no payment was made except lame excuses given by the management. In the month of April, 2019 the claimant along with other employees have also been cautioned by the management that in case, they press upon their demand of recovery of dues, then they would be either transferred at other far distant places or their services would be terminated. The amount which is liable to be recovered from the management based on revised pay on the basis of Majithia Wage Board is legitimate dues of the claimant and as such the claimant is not willing to forego the same in any manner. The claimant has got calculated his estimate revised salary and arrears of pay from a competent Chartered Accountant as per the Majithia Wage Board recommendations w.e.f. 11.11.2011 to April, 2019, as such the total amount of ₹ 59,86,541/- including interest @ 18% per annum is due from the management. Despite the demand of detailed arrears of salary calculated as per Majithia Wage Board recommendations w.e.f. 11.11.2011 to April 2019, the management has intentionally and deliberately not been implementing the recommendations of the Majithia Wage Board and has not given any benefit to the claimant in spite of several oral and written requests. The claimant has not signed any declaration in order to waive of the benefits accrued under the Majithia Wage Board recommendations. Since the claimant did not bow down before the management and withdrew his claim, consequently his services were illegally terminated on 19.06.2019 by sending an illegal resignation from his email id. at about 10:30 P.M. and the same was immediately accepted. Pursuant to which, the claimant was not permitted to enter in the office and as such he was shunted out illegally. The matter was reported to the police and FIR has already been registered against the official of the managements for the said illegal act. The management be asked to furnish the details of the salary paid to the employee of the establishment before 07.02.2014 and being paid now and the reasons for

non-implementation of the recommendations of the Majithia Wage Board by the management. Despite the demand of details arrears of salary calculated as per the Majithia Wage Board recommendations w.e.f. 07.01.2014 to 01.04.2019, the management has intentionally and deliberately not been implementing the recommendations of the Majithia Wage Board and has not given any benefit to the claimant in spite of several oral and written requests. The present claim is without prejudice to the rights of the claimant to the Contempt of Court proceedings against the management for its deliberate, willful and intentional violation of the order dated 07.02.2014 of Hon'ble Supreme Court. The cause of action of the claimant is continuous. As such, the present claim is being filed within period of limitation. The claimant has not filed any other claim or petition before any Court of Law except the present one. The claim application is accompanied with calculation sheet Annexure 'A3'. Prayer is made that Award may be passed directing the managements to implement the Majithia Wage Board recommendations and re-fix the pay of the claimant accordingly with further prayer directing the managements to release arrears of pay to the tune of ₹ 59,86,541 as per Annexure 'A3' with costs and other amount up to his service i.e. 19.06.2019 and to pay interest @ 18% on the arrears of pay from the date of its accrual till actual payment.

5. On notice, the management No. 1 & 2 contested the claim petition by filing joint written statement on 30.07.2021 wherein preliminary objections are raised on the ground that the workman filed the fresh reference claiming re-fixation of pay and for recovery of ₹ 59,86,541/- as arrears of pay up to 01.04.2019 on account of implementation of recommendations of the Majithia Wage Board vide notification dated 11.11.2011 issued by Central Government by putting the wrong facts as well as by levelling the false allegations and by presenting the fabricated calculation sheet before this Tribunal. The claimant does not fall under the definition of the workman as per Section 2(s)(ii to iv) of the ID Act. The claimant has failed to claim himself as workman as per the provisions of the ID Act. As per the nature and status of post, the claimant does not fall within the definition of the 'workman' under the ID Act. In accordance with the exception under Section 2(f) of the Act 1955 he would fall under the supervisory / managerial capacity as he had a team working under him. The claim statement is liable to be dismissed on account of mis-joinder of the necessary parties as the alleged service rendered by the claimant with the answering management i.e. Chief Manager, HR (who has not been impleaded as party in the present reference) and authorities of Head Office have been impleaded by name. As per the facts, the recommendations of Majithia Wage Board were submitted to the Central Government on 31.12.2010 and same were notified by the Government of India on 11.11.2011. The said recommendations were put under challenge by various media agencies by way of filing the writ petitions before the Hon'ble Supreme Court of India and the said cases were adjudicated upon before the Hon'ble Supreme Court of India in February 2014. It is further stated that the submission of resignation is admitted by the claimant himself. It is well settled proposition of law that admission is the best evidence. Besides, the claimant had concealed the material fact that at the time of leaving the managements after putting the resignation, had accepted all the service benefits and received full & final amount from the managements and nothing remained pending / due and as such the present claimant has no right to contest the present reference being not maintainable. The procedure under the scheme of the Act 1955, aggrieved employee seeking to recover any amount under the Act 1955, is required to first move an application before the State Government. As per Rule 36 of the Act 1955, such an application is required to be made in prescribed Form 'C' addressed to the Secretary to the State Government along with the details of the amount claimed, preceded by a 15 days prior notice regarding payment to the concerned newspaper establishment. In this case, the above said requirement of Rule 36 of the Act 1955 has not been complied with. Hence, the proceeding in question is void ab-initio. As per Section 17 of the Act 1955, a Civil Suit does not lie after the expiry of 3 years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February 2018 for the benefit claimed by the claimant for the year 2012. The claimant has annexed the calculation sheet showing the turn-over of the management only to get the benefit from the management which is a dispute in question of fact and cannot be

decided in summary proceedings before this Tribunal. A dispute in question of fact can only be adjudicated upon by the concerned Civil Court. The basis of computation of the amount claimed has not been indicated by the claimant. The identity of the person who has computed the said amount has not been revealed by the claimant. Hence, the same is frivolous and baseless. The answering management do have the spirit to honour the judgment delivered by the Hon'ble Supreme Court of India but in the present reference the claimant is not entitled to any benefit in compliance of the judgments delivered by the Hon'ble Supreme of India. No amount is due to the claimant under the provisions of Section 17 of the Act 1955. Further the amount claimed is based on non-existing right. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per para 20(j) of the Majithia Wage Board recommendations. The claimant has voluntarily chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board. Now nothing is payable to the claimant. The claimant had never raised any question nor made any complaint to the management or to any competent authority regarding the undertaking which he had given within the specified time of 3 weeks. Now after lapse of long time the claimant is raising dispute of non-payment of wages as per the Majithia Wage Board recommendations which is a simply after thought, illegal and baseless. No complaint can be entertained after passing almost 8 years of lapse of prescribed period. Since the year 1956 various Wage Boards have been constituted from time to time and the option has been given to the employees to opt for payment of existing pay scale and existing emoluments in all the three various Wage Boards. When the Majithia Wage Board was finally notified on 11.11.2011, most of the employees opted to sign 20(j) as per their own accord and hence decided to exercise the option. The employees were informed about the Majithia Wage Board recommendations and para 20(j) of the same for payment of the existing pay scale and existing emoluments by affixing copy of the Majithia Wage Board recommendations and notice on the notice board of the company. The employees have themselves opted to sign 20(j) of the Majithia Wage Board recommendations on their own accord and free will after well understanding the Majithia Wage Board recommendations. The allegations that employees signed 20(j) under coercion is totally false and baseless. The plea is beyond period of limitation. The plea of coercion is not tenable under Order VI Rule 4 CPC. The validity of 20(j) of the Majithia Wage Board recommendations has not been challenged separately by any employees of any newspaper establishment even after 11.01.2014. The management DB Corp. Ltd. is a group of businesses including textile, MyFM, digital media, real estate, power and denim. As per the Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted. The management's Hisar Establishment is an independent establishment as it own independent RNI certificate registration issued by the office of Registrar of Newspaper for India. Thus, the present reference is not maintainable.

6. Further on merits, the contents of para 1 to 5, 7 & 8 are replied being matter of record. It is specifically denied that in the month of April 2019 the claimant along with other employees have also been cautioned by the management that in case, they press upon their demand of recovery of dues, then they would be either transferred at other far distant places or their services would be terminated and the claimant be put to strict proof of the averments as alleged by him. The managements are having various offices throughout the country. The services of the claimant can be transferred as administrative process without any ill-will as per the service rules but now the claimant is trying to wriggle out the same by levelling false and frivolous allegation against the management and the same appears to be fiction of the mind of the claimant and the managements reserve their right to initiate appropriate proceedings against the claimant before the competent Court of Law for levelling false and scandalous allegations against the managements. After submission of his resignation, the claimant has no right to enter the premises of the management. Further, similar stand is taken as taken in the preliminary objection. Rest of the averments of claim statement are denied as wrong except para 21 which is replied in a formal manner. Prayer is made that the reference may be dismissed with exemplary cost.

7. The claimant filed replication wherein the contents of the written statement except admitted facts are denied being without any basis and frivolous and averments of claim statement are reiterated.

8. From the pleadings of the parties, following were framed vide order dated 27.08.2021 :-

1. Whether the arrears of revision of pay to applicant are to be paid by the management, if so, to what effect and to what relief he is entitled to, if any? OPW
2. Whether applicant does not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act? OPM
3. Whether the claim of applicant is bad on the ground of mis-joinder and non-joinder of necessary parties /OPM
4. Whether the claim of applicant is time barred ? OPM
5. Whether the claim of applicant is not maintainable under the provisions of Section 17 of the Working Journalists & Other Newspaper Employees (Condition of Services) and Miscellaneous Provisions Act, 1955 ? OPM
6. Relief.

9. In evidence, claimant Sudhir Kumar Srivastava examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with copy of documents Exhibit 'AW1/1' and Exhibit 'AW1/2'.

Exhibit 'AW1/1' is Gazette Notification dated 11.11.2011 of Government of India, Ministry of Labour & Employment

Exhibit 'AW1/2' is calculation sheet of estimated gross salary as per Majithia Wage Board prepared by Chartered Accountant Dhruv Gupta.

10. The workman examined AW2 Dhruv Gupta, Chartered Accountant, who tendered his affidavit Exhibit 'AW2/A' along with documents Exhibit 'AW2/1' to Exhibit 'AW2/3'.

Exhibit 'AW2/1' is Employees' Provident Fund Member Passbook of Sudhir Kumar Srivastava, bearing Member ID No.PBCHD00209890000000448, bearing establishment ID. /Name PBCHD0020989000/DB Corporation Limited, UAN No.100366063663, incorporating employee share ₹ 43821/- and employer share ₹ 55,208/- for the period w.e.f. 31.03.2009 to 31.03.2019.

Exhibit 'AW2/2' is copy of Form 23-ACA, pursuant to Section 220 of the Company's Act, 1956.

Exhibit 'AW2/3' is the certificate dated 13.05.2019 issued by Dhruv Gupta, Partner for DGR & Associates Chartered Accountants.

11. The workman also examined AW3 Avdhesh Gaur, who brought the summoned record and proved the copy of the same Exhibit 'A1' to 'A6'.

Exhibit 'A1' is declaration dated 15.11.2011 by Sudhir S/o Late R. K. Lal.

Exhibit 'A2' is resignation through e-mail dated 20.06.2019 at 9:36 P.M. with acceptance.

Exhibit 'A3' is annual appraisal letter dated 30.08.2018 for the financial year 2017-18.

Exhibit 'A4' is annual appraisal letter dated 30.04.2019 for the financial year 2018-19.

Exhibit 'A5' is offer letter dated 11.09.2006 issued by HR Head AGM, CPH.

Exhibit 'A6' is transfer letter dated 06.03.2007 from Manager HR & Administration, Dainik Bhaskar to Sudhir Srivastava.

12. On 27.02.2023 the claimant-workman closed his evidence in affirmative.

13. On the other hand, management examined MW1 Avdhesh Gaur - Assistant Manager HR Admn, Office of Dainik Bhaskar, Chandigarh who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' to Exhibit 'M4'.

Exhibit 'M1' is identity card of Avdhesh Gaur

Exhibit 'M2' is authority letter dated 08.05.2023 issued in his favour by DB Corp. Ltd.

Exhibit 'M3' is resignation with acceptance dated 20.06.2019.

Exhibit 'M4' is declaration dated 15.11.2017.

14. On 31.10.2023 Learned Representative for the management No.1 & 2 closed oral evidence. On 06.11.2023 Learned Representative for management No.1 & 2 closed documentary evidence.

15. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issue No. 1 :

16. Onus to prove issue No.1 is on the workman.

17. Under this issue, the claimant Sudhir Kumar Srivastava examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW1 has supported his oral version with documents Exhibit 'AW1/1' and Exhibit 'AW1/2'.

18. In order to prove the calculation of the arrears claimed, claimant examined AW2 Dhruv Gupta - Chartered Accountant and Partner of the DRG and Associates Firm, who vide his affidavit Exhibit 'AW2/A' has proved that the calculation sheet prepared by him. AW2 has supported his oral version with documents Exhibit 'AW2/1' to Exhibit 'AW2/3'.

19. For corroboration the claimant has examined AW3 Avdhesh Gaur - Assistant Manager, HR Admn. Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh, who proved on record documents Exhibit 'A1' to Exhibit 'A6'.

20. On the other hand, the management has examined MW1 Avdhesh Gaur - Assistant Manager, HR Admn Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh. (MW1 in his testimony referred the management as respondent and in cross-examination of AWs referred the claimant as workman. In order to avoid any ambiguity the workman is hereinafter referred as claimant and the respondent is hereinafter referred as management.) MW1 vide his affidavit Exhibit 'MW1/A' deposed that he is working as Assistant Manager - HR & Admin (CPH2) with the managements and has been authorised by the management to depose on its behalf in this case before this Court. He is well conversant with the facts of the present case. MW1 further deposed that DB Corp. Ltd. is group of businesses including textile, MY FM, Digital Media, Real Estate, Power, Denim. As per Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted and all the units have independent existence and the accounts of each unit are being prepared by that unit. The claimant had concealed the material fact that the claimant has resigned from his job with effect from 20.05.2019 submitting his resignation, which was duly accepted by the management and after resigning from the job the claimant is at present working with

Punjab Kesri newspaper and the said fact has also been admitted by the workmen in his cross-examination. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per Para 20(j) of the Majithia Wage Board recommendations. The claimant has chosen / opted to retain his existing wages and existing emoluments as per Para 20(j) of the Majithia Wage Board at his own voluntarily by signing a declaration dated 15.11.2011 and after signing the declaration, now nothing is payable to the applicant as he has already received wages according to option opted by him as per Para 20(j) and opted to retain his current salary and emoluments at that time. All the employees working have given their signatures on option letter as per their will and submitted it to the management. MW1 further deposed that the claimant is not entitled for the benefit of the compliance of the judgment passed by the Hon'ble Supreme Court of India. MW1 has supported his oral version with documents Exhibit 'M1' to Exhibit 'M4'. It is penitent to mention here that in affidavit Exhibit 'MW1/A' the documents are referred as Annexure 'R1' & Annexure 'R2' which are proved into evidence vide Exhibit 'M1' & Exhibit 'M2' respectively. Further, the declaration dated 15.11.2011 is placed on record by the claimant vide Exhibit 'A1' and the same is placed on record by the management vide Exhibit 'M4'. Similarly resignation letter along with acceptance is placed on record by the claimant vide Exhibit 'A2' and the same is placed on record by the management vide Exhibit 'M2'.

21. From the oral as well as documentary evidence led by the parties it comes out that undisputedly on 06.03.2007 the claimant was appointed as Executive Admin. in the Dainik Bhaskar newspaper. The salary of the claimant was fixed at the rate of ₹ 6,500/- per month inclusive of all perks and allowances. Further it is admitted fact of the parties that after about 4 years of appointment, the claimant was promoted as Senior Executive in the year 2010. It is also admitted fact of the parties that the services of the claimant are being regulated under the Act 1955. In the claim statement, the claimant has alleged that his services were illegally terminated on 19.06.2019 by sending an illegal resignation from his e-mail ID. at about 10:30 P.M. which was immediately accepted. The claimant alleged that matter was reported to the police and FIR was registered against the official of the management for the said illegal act. On the other hand, the managements in the written statement admitted the submission of resignation by the claimant and acceptance of the same and denied the allegations of sending of an illegal resignation as wrong with the plea that the claimant be put to strict proof of the same. To my opinion, the plea taken by the claimant that his illegal resignation was send from his email ID led to the inference that admittedly the resignation of the claimant was tendered from his own email ID. It is not the case of the claimant that any official or officer of the managements was aware of his email ID password. Moreover, the claimant did not mention the particulars of the FIR such as FIR number, date and police station where the same has lodged and the offences for which the FIR was lodged. The claimant has also not disclosed the name of the officials of the management against whom the alleged FIR was lodged. Moreover, the fate of said FIR is not proved into evidence. When put to cross-examination the claimant/ AW1 stated that he has brought the photocopy of application dated 20.06.2019 filed by him before the Assistant Labour Commissioner, U.T. Chandigarh for mental harassment by the management. AW1 admitted as correct that there is no reference of sending any wrong resignation on his behalf from his computer system on 20.06.2019 in his application dated 20.06.2019. AW1 further stated that he has challenged his resignation dated 20.06.2019 before the Assistant Labour Commissioner and he can produce copy of the same on the next date of hearing. The remaining cross-examination recorded on 12.12.2022 was deferred for the next date on the request of the management with direction to the witness to produce the record of demand notice, failure report of ALC, U.T. Chandigarh. AW1 in his remaining cross-examination recorded on next date i.e. 27.02.2023 stated that he has brought the original letter dated 20.06.2019 addressed to ALC, U.T. Chandigarh and placed on record copy of the same. AW1 admitted as correct that the letter dated 20.06.2019 does not bear diary number and seal of the office of ALC, U.T. Chandigarh. AW1 further stated that he cannot tell the name of the official who has put his initials with date 20.06.2019 on the application. AW1 stated that he does not remember if he had moved any other application subsequent to 20.06.2019 to ALC, Chandigarh. AW1 admitted as correct that there is no reference of sending any wrong resignation on his behalf from his computer system in the said application dated 20.06.2019. AW1 in his cross-examination further stated that he has not know if any proceedings qua

application dated 20.06.2019 are pending or not before the Labour Department. AW1 further stated that he has challenged his alleged resignation before the Hon'ble High Court. The particulars of the case filed before the Hon'ble High Court are available with his Advocate Shri Amit Sharma and the same are not to his knowledge. He can tell the particulars and status of the case pending before the Hon'ble High Court on the next date after consulting the same from his Advocate. AW1 again said that he has not challenged his resignation before the Hon'ble High Court and the proceedings pending before the Hon'ble High Court pertains to FIR. He has not challenged his termination or resignation before any Court. Above all the claimant got produced his resignation along with his acceptance vide Exhibit 'A2' by examining AW3 Avdhesh Gaur - Assistant Manager HR Admin, Dainik Bhaskar. When put to cross-examination AW3 Avdhesh Gaur admitted the suggestion as correct that the workman has resigned from his job and his resignation Exhibit 'M2' was accepted by the management. AW3 in his cross-examination further stated that till date the workman has not withdrawn his resignation. AW3 in his cross-examination further stated that as per record the workman did not give anything in writing that he has not presented the resignation. From the cross-examination of AW1 referred above it is made out that the claimant did not challenge his resignation being illegal before any Court of competent jurisdiction or any competent authority. Moreover, AW1 in his cross-examination stated that at present he is working as Administrative Head with Punjab Kesari, Sector 25, Chandigarh. He joined Punjab Kesari after about 8 months of his alleged resignation. From the discussion made above, it is duly proved on record that the resignation tendered by the claimant is legal and valid. Till date the claimant has not made any efforts to withdraw his resignation.

22. In the present case, the claimant is demanding arrears of pay as revised according to the recommendations of the Majithia Wage Board w.e.f. 07.01.2014 to 01.04.2019 as per notification dated 11.11.2011 / Exhibit 'AW1/1'. On the other hand, the managements have taken the plea that in view of the option exercised by the claimant under para 20(j) of the notification dated 11.11.2011, the claimant is not entitled to seek benefits of the Majithia Wage Board recommendations.

23. To my opinion, in order to decide whether para 20(j) of notification dated 11.11.2011 is attracted in this case, it would be apposite to go through para 20(j) of the said notification, which is reproduced as below :-

"20(j) The revised pay scales shall become applicable to all employees with effect from 1st July 2010. However, if an employee within three weeks from the date of publication of Government Notification under Section 12 of the Act enforcing these recommendations exercises his option for retaining his existing pay scales and "existing emoluments", he shall be entitled to retain his existing scale and such emoluments."

24. The claimant by examining AW3 Avdhesh Gaur has brought into evidence the claimant's declaration dated 15.11.2011 under para 20(j) of the notification dated 11.11.2011 / Exhibit 'A1'. On the other hand, the management has also proved into evidence the claimant's declaration dated 15.11.2011 vide Exhibit 'M4'. Learned Representative for the claimant argued that declaration Exhibit 'A1' is not valid in the eyes of law as it does not bear any passing reference of the designation, employee code, department and place of posting etc. The said declaration is not addressed to any official, countersigned or signed by any witness, without verification, acceptance, place not mentioned and not even attested by any notary. There is no passing reference of the existing wages of the claimant, the said declaration is not voluntarily and has been obtained under duress and under threat of transfer / termination. It is also apparent that is cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant. It is further argued by Learned Representative for the claimant that the declaration is two-sided legal transaction which means there has to be a second party to the declaration. In the present case, the alleged declaration is only signed by the claimant and there is no reference to whom the same is given, furnished. There is no counter-signature of the authority who had accepted it. On the other hand, it is argued by Learned Representative for the management that the declaration dated 15.11.2011 i.e. Exhibit 'A1' / Exhibit 'M4' is a valid document and by way of exercising option in the form of above said declaration, the claimant has chosen / opted to retain his

existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. Therefore, nothing is payable to the claimant as he has already received wages according to the option opted by him under para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. It is further argued by Learned Representative for the management that the declaration Exhibit 'A1' / Exhibit 'M4' is of dated 15.11.2011 and till date the claimant has not withdrawn the same alleging that it was obtained under pressure. Much stress have been made upon the fact that the claimant has not withdrawn the said declaration as it was genuine and signed by him with his free consent. Learned Representative for the management referred case law reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G. Diwan and 2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi**.

25. To my opinion, the argument advanced by the Learned Representative for the claimant that declaration Exhibit 'A1' / Exhibit 'M4' is signed by the claimant under coercion or threat is devoid of merits because the claimant / AW1 in the claim statement has taken the plea that his signatures were obtained forcible on declaration dated 15.11.2011 and got the same produced on record vide Exhibit 'A1' by examining AW3 Avdhesh Gaur but when put to cross-examination claimant / AW1 in a contradictory manner stated that Exhibit 'M1' does not bear his signatures at point 'A'. AW1 in his cross-examination further stated that in the year 2015, on the instructions of the management, he got the declaration signed from the concerned employees of Dainik Bhaskar. AW1 admitted as correct that he had also signed the declaration similar to the declaration he got signed from other employees of Dainik Bhaskar and similar of Exhibit 'M1'. AW1 in his cross-examination further stated that from year 2015 till date he did not withdraw the said declaration alleging that it was obtained under pressure. AW1 further stated that he does not remember if he had filed or not any complaint before any competent authority alleging that his signatures were forcibly obtained on a declaration by the management of Dainik Bhaskar. AW1 admitted as correct that he did not file any written complaint to any competent authority that his signatures were forcibly obtained on a declaration by the management of Dainik Bhaskar. AW1 further stated that during his tenure he had obtained the signatures of about 40-50 employees of Dainik Bhaskar on declaration. He did not threaten any of the employees of Dainik Bhaskar while obtained their signatures on declaration. None of the said 40-50 employees of Dainik Bhaskar withdrawn their declaration till date. None of them lodged any written complaints before any competent authority alleging that their signatures are forcibly obtained on declaration. AW1 voluntarily stated that they made verbal complaints to him. AW1 denied the suggestion as wrong that his volunteer statement is incorrect. AW1 further stated that on receipt of verbal complaints from 40-50 employees, he further informed to his senior, who replied that she will terminate them from service if they lodged such like complaints. To my opinion, the aforesaid version of AW1 that 40-50 employees complained to him about forcibly obtaining the signature on declaration and that AW1 further informed the said complaint to his senior, does not stand proved because there is no documentary proof of the same. AW1 in his cross-examination stated that the aforesaid directions of his senior was verbal and there is no documentary proof of the same. So far signatures of claimant / AW1 at point 'A' of declaration Exhibit 'A1' / Exhibit 'M4' is concerned, the claimant's own witness AW3 Avdhesh Gaur in his cross-examination admitted the suggestion as correct that during his service with the management the workman has signed a declaration dated 15.11.2011, copy of the same is Exhibit 'A1' (already exhibited during examination in chief of AW3). AW3 admitted as correct that Exhibit 'A1' is the part of the service guidelines of the workman. AW3 in his cross-examination admitted as correct that declaration dated 15.11.2011 Exhibit 'M1' is signed by the workman. Till date the declaration Exhibit 'M1' has not been revoked. AW3 admitted as correct that the workman had resigned from the job and his resignation Exhibit 'M2' was accepted by the management. From the aforesaid version of AW3 it is duly proved on record that the declaration dated 15.11.2011 / Exhibit 'A1' is signed by the claimant. The claimant's plea that his signatures are forcibly obtained on the declaration does not stand proved as till date the claimant did not lodge any complaint to any competent authority alleging that his signatures are forcible obtained. Moreover, the claimant has failed to controvert the fact that before obtaining option under para 20(j) of notification dated 11.11.2011 the management had put the notice dated 12.11.2011 / Exhibit 'MX' on the notice board to apprise its employees about their right to exercise the option. MW1 Avdhesh Gaur in his cross-examination has brought copy of notice dated 12.11.2011 vide Exhibit 'MX'. MW1

has denied the suggestion as wrong that notice is prepared afterwards. As per the settled law the suggestion denied by a witness is no evidence unless proved otherwise. The claimant has failed to bring on record any evidence to controvert the genuineness of notice Exhibit 'MX'.

26. The claimant's plea that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant is also devoid of merits. There is no illegality, even if, the managements for the convenience of its employees supplied a proforma to exercise option under para 20(j) of notification dated 11.11.2011. It is for the concerned employee herein claimant to fill-in the proforma by exercising his own discretion. The perusal of the details filled in the proforma of declaration dated 15.11.2011 / Exhibit 'A1' would prove beyond doubt that the claimant with his free will and consent has opted to retain his existing wages and existing emoluments as per para 20(j) of the notification dated 11.11.2011. After exercising option by way of declaration dated 15.11.2011 / Exhibit 'A1' the claimant is estopped from seeking the arrears of revised pay as calculated by the Chartered Accountant. The case law reported in **1996(3) SCT 597** titled as *V. M. Gadre (Dead) by LRs Versus M.G Diwan and 2005(8) SCC 49* titled as *State of Uttranchal Versus Jagpal Singh Tyagi* are applicable to the present case to an extent.

27. The contention of Learned Representative for the managements that after acceptance of resignation vide Exhibit 'A2' / Exhibit 'M3', the management has called the claimant to receive full & final payment but the claimant did not receive the same stands proved from the cross-examination of claimant / AW1 wherein he has admitted as correct that after alleged resignation he was called by the management to receive full & final payment and he did not receive the same. AW1 in his cross-examination further stated that during tenure of his service with Dainik Bhaskar he never received any salary under protest with reserving his right to claim the benefits of Majithia Wage Board. Claimant's own witness AW3 Avdhesh Gaur in his cross-examination stated that the full & final account of the workman was settled and amount of ₹ 12,000/- was to be recovered from the workman. The workman refused to accept the full & final settlement and did not pay the outstanding amount of ₹ 12,000/- to the management. AW3 further stated that the lump sum full & final settlement amount payable to the workman comes to ₹ 21,000/- ₹ 22,000/- approximately without any deduction. The management offered the workman to accept the full & final settlement amount to which the workman refused on the ground that he has not presented his resignation. AW3 further stated that as per record the workman did not give anything in writing that he has not presented the resignation. Written intimation of full & final settlement was sent by post to the workman. The workman during his service never received any salary under protest and has not reserved his right to claim benefits of Majithia Wage Board. AW3 admitted as correct that the workman is not entitled to the benefits of Majithia Wage Board recommendations. From the testimony of AW1 and AW3 referred above it is duly proved on record that the claimant himself refused to accept the amount of full & final payment, though the same was offered by the management. The claimant's plea that he refused to receive the amount of full & final settlement on the ground that he did not tender the resignation is totally unjustified. The resignation is proved to have been tendered by the claimant himself which is duly accepted by the management. After resignation from the service of the management the claimant has even joined service with another employer i.e. Punjab Kesari.

28. Consequently, the claimant is not entitled to seek any arrears of revised pay on the basis of Majithia Wage Board recommendations / notification dated 11.11.2011.

29. Accordingly, this issue is decided against the claimant-workman and in favour of management No.1 & 2.

Issue No. 2 :

30. Onus to prove this issue is on the managements.

31. Learned Representative for the managements argued that the claimant does not fall within the definition of the 'workman' as defined under Section 2(s) of the ID Act as the nature of the work assigned to the claimant was supervisory. On the other hand, Learned Representative for the claimant argued that the

claimant was not having any managerial or supervisory position. The claimant was not having any power to appoint / dismiss any employee and also had no power to grant leave to any employee. To support his arguments Learned Representative for the claimant referred case law reported in **2006(4) SCT 1** titled as **Anand Regional Co-op. Seedgrowers Union Ltd. Versus Shaileshkumar Harshadbhai Shah** in para 11 to 13 held as below :-

"11. For determining the questions as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.

12. Supervision contemplates direction and control. While determining the nature of the work performed by the employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.

*13. The precise question came up for consideration in **Ananda Bazar Patrika (P) Ltd. v. Workmen [(1970)3 SCC 248]** wherein it was held :*

"The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity.....

A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.

Judging by the said standard, we are of the opinion that the First Respondent did not come within the purview of the exclusionary clause of the definition of workman. Ananda Bazar Patrika (supra) was followed by the court in large number of cases."

32. In the present case, the claimant / AW1 in his cross-examination stated that initially he joined Dainik Bhaskar at the post of Executive and at the time of resignation he was working at the post of Senior Executive. AW1 denied the suggestion as wrong that the Executive works under the Senior Executive. AW1 voluntarily stated that they work under the Manager. AW1 denied the suggestion as wrong that his voluntarily statement is incorrect. It is settled law that the suggestion denied as wrong by the witness is no evidence unless proved otherwise. In the present case, the management has not led any evidence to prove that the claimant was exercising powers of control or supervision. The judgment **2006(4) SCT 1 (supra)** is applicable to the facts of the present case to an extent. Consequently, the management has failed to prove that the claimant had any authority to initiate departmental proceedings against the subordinates or he had power of control or supervision in regard to recruitment, promotion etc. The management even failed to prove that the claimant had authority to sanction leave to any employee. The claimant, therefore, is a 'workman' as defined under Section 2(s) of the ID Act.

33. Accordingly, this issue is decided against the management No.1 & 2 and in favour of the claimant-workman.

Issue No. 3 & 5 :

34. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

35. Onus to prove both these issues is on the managements. During course of arguments both these issues are not pressed by the managements.

36. Accordingly, both these issues are decided against the management No.1 & 2 and in favour of the claimant-workman.

Issue No. 4 :

37. Onus to prove this issue is on the managements.

38. Learned Representative for the managements contended that the claim statement is time barred. A Civil Suit does not lie after the expiry of three years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February 2018 for the benefit claimed by the claimant for the year 2012. On the other hand, Learned Representative for the claimant argued that the claimant is seeking his revised pay w.e.f. 01.11.2011, amount of interim relief and arrears of pay with interest @ 18% per annum as per the award given on the recommendations of Majithia Wage Board. On every passing month, the claimant was getting less salary than his due entitlement and on every month a fresh cause of action had arisen in favour of the workman. Whereas the reference to this Tribunal was made by the Assistant Labour Commissioner, U.T. Chandigarh on 19.09.2019. Thus, the claim of the claimant is well within time in as much as the cause of action in the present case is recurring in nature.

39. As proved from the documents on judicial file, the claim raised the application under Section 17(1) of the Act 1955 before the Labour Commissioner, U.T. Chandigarh on 03.06.2019 and the Worthy Secretary Labour, Chandigarh Administration under Section 17(2) of the Act 1955 referred to present dispute for adjudication to this Tribunal / Court vide reference dated 19.09.2019. Moreover, the contention raised by Learned Representative for the claimant carries force as denial of revision of pay and benefits of arrears of pay is a continuing cause giving rise to a recurring cause of action. Therefore, the bar of limitation does not apply.

40. Accordingly, this issue is decided against management No. 1 & 2 and in favour of the claimant-workman.

Relief :

41. In the view of foregoing finding on the issue No.1 above, this reference is declined and answered against the claimant-workman. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 06.11.2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT
Notification

The 2nd February 2024

No. 13/1/9754-HII(2)-2024/1803.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **66/2020** dated **06.11.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

MANJIT SINGH R/O V.P.O. SANIPUR, DISTRICT FATEHGARH SAHIB - 140406 (Workmen)

AND

1. M/S DAINIK BHASKAR CORPORATION LIMITED, PLOT NO.280, SARKHEJ GHANDINAGAR HIGHWAY, NEAR YMCA CLUB, MAKARBA, AHMEDABAD, GUJARAT - 380051 THROUGH ITS MANAGING DIRECTOR.
2. M/S DAINIK BHASKAR CORPORATION LIMITED, CHANDIGARH UNIT, PLOT NO.11-12, GROUND FLOOR, DAKSHIN MARG, SECTOR 25, CHANDIGARH - 160036 THROUGH ITS CHIEF EXECUTIVE. (Management)

AWARD

1. Vide Endorsement No.13/1/9754-HII(2)-2020/11727 Dated 04.09.2020 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the claim application filed by Manjit Singh (*hereinafter referred "claimant"*) to the M/s Dainik Bhaskar Corporation Limited & Another (*hereinafter referred "management"*) under Section 17(1) of the Working Journalists & Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (*hereinafter in short referred "Act 1955"*) in following words :-

"Whether the arrears of revision of pay to namely Sh. Manjit Singh, Resident of V.P.O. Sanipur, District Fatehgarh Sahib - 140406 (Workman/applicant) were to be paid by M/s Dainik Bhaskar Corporation Limited, Plot No.280, Sarkhej Ghandinagar Highway, Near YMCA Club, Makarba, Ahmedabad, Gujarat - 380051 through its Managing Director and M/s Dainik Bhaskar Corporation Limited, Chandigarh Unit, Plot No.11-12, Ground Floor, Sector 25, Chandigarh - 160036 through its Chief Executive (Managements) according to the recommendations of the Majithia Wage Board and also as per the direction of the Hon'ble Supreme Court of India under The Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provision Act, 1955 and in compliance of the orders dated 28.04.2015, 12.01.2016, 14.03.2016, 23.08.2016 passed by the Hon'ble Supreme Court of India in CCP No.128/2015 and 129/2015 AND WP (Civil) 246/2011 dated 07.02.2014; if so, to what effect and to what relief he is entitled to, if any ?"

2. Upon notice, the claimant-workman appeared through his Representative Shri Ajay Sharma. Statement of claim was filed on 26.03.2021.

3. Briefly stated the averments of claim statement are that the claimant was working as Helper with Dainik Bhaskar Newspaper having its registered office at Sector 25, Chandigarh. On account of revision of pay & other allowances accrued on the acceptance of the recommendations of the Majithia Wage Board

which were accepted by the Government of India and notified in the Gazette of India on 11.11.2011, a substantial amount is due from Dainik Bhaskar / employer which is denied. On account of fact that a large number of persons are employed in the various newspapers and periodical being published in India and such newspaper or periodical establishment had devised its own way of employing persons to run its working, the Government of India constituted the Press Commission to enquire into the conditions of employment of working journalists. The Press Commission made certain recommendations for improvement and regulation of such service conditions by means of legislation. Accordingly, The Working Journalists (Conditions of Service) and Miscellaneous Provisions Bill was introduced in the Parliament. Consequently, on 20.12.2015 the Act 1955 was enacted to regulate certain conditions of service including minimum period of notice, gratuity, provident fund, settlement of industrial dispute, leave with pay, hours of work and minimum wages of the Working Journalists and the other persons employed in the Newspaper Establishments. From the harmonious joint reading of the provisions of the Act 1955, it is apparent that the Central Government has been competent to fix and revise the wages of the journalists and other employees having been governed by the Act 1955. A procedure has been laid down for fixing and revising rate of wages for which a mandate is casted upon the Central Government to constitute a Wage Board in the manner prescribed in it, which shall examine all the relevant factors like cost of living, the prevalent rate of wages for comparable employment etc. for the ascertainment of the rate of wages and thereafter present its recommendation to the Central Government. On the receipt of such recommendation by the Wage Board, the Central Government is also competent to accept, reject and alter any of the recommendations as may deemed fit. Consequently, the Central Government shall notify the recommendations by way of an Award in the official Gazette of India. In pursuance to an exercise undertaken by Department of Labour and Employment, Union of India under Section 9 of Act 1955, the purpose of enabling the Central Government to fix or revise rate of wages for the working journalists and non-journalists newspaper employees, a Wage Board was constituted under the Chairmanship of Hon'ble Mr. Justice G. R. Majithia (Retd.) and the Wage Board was commonly known as Majithia Wage Board. After examining all the relevant factors regulating the revision of pay and affording opportunity to all the affected parties, the Majithia Wage Board finally submitted its recommendations on 31.12.2010 to the Union of India. On 25.10.2011 the Union of India accepted the same in toto without any modification. The said recommendations were further notified in the official Gazette vide notification dated 11.11.2011. On the publication of the recommendation of the Majithia Wage Board by way of an Award vide Gazette Notification dated 11.11.2011, various newspaper establishments and media houses vide W.P. (C) No.538 of 2011 had made a challenge under Article 32 of the Constitution of India before the Hon'ble Supreme Court of India alleging Act 1955 being *ultra-virus* as it infringes the fundamental rights guaranteed under Article 14, 19(1)(a) and 19(1)(g) of the Constitution of India. There was also a challenge to the validity of notification dated 11.11.2011 issued by the Union of India. The bunch of aforesaid petitions remained pending for hearing before the Hon'ble Apex Court for 3 years and ultimately while disagreeing with the contentions raised by the newspaper establishments and media houses, the Hon'ble Apex Court dismissed all the petitions vide its judgment dated 07.02.2014 while holding that the recommendations of Majithia Wage Board are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under Article 32 of the Constitution of India. Despite the dismissal of the Writ Petitions challenging the validity of Act 1955 and notification dated 11.11.2011, and further directions of the Hon'ble Apex Court for payment of arrears, no compliance was being made by the news agencies. The employees had also taken up their issue before the management No.1 & 2 for payment of revised wages and arrears as per the directions of the Hon'ble Apex Court, however, they were told that a review application have been preferred by them and further course of action would be taken up after its adjudication. Another order dated 13.10.2017 was passed by the Hon'ble Apex Court clarifying the previous judgment dated 19.06.2017 to the extent that the disputes referred to adjudication under Section 17(2) of the Act 1955, will be disposed of by the concerned Labour Court / Industrial Tribunal as expeditiously as possible preferably within six months of the reference being made.

4. It is further averred that the claimant was appointed as Unit Attendant in the Production Division of Dainik Bhaskar Newspaper on 23.09.2011. The salary of the claimant was fixed @ ₹ 6,000/- per month including all perks and allowances. Initially he was on probation for 6 months and later on his services were regularised. The services of the claimant were being regulated under the Act 1955. As per the notification, the employees have been categorised in groups and as such the claimant falls within the ambit of Group 6 Factory Staff. In the month of February, 2019 the claimant along with other employees has also been cautioned by the management that in case, they press upon their demand of recovery of dues, then they would be either transferred at other far distant places or their services would be terminated. Despite above, the claimant had been pressing his request of payment of arrears of salary as per the Majithia Wage Board recommendations upon the management No.2, however, management No.2 started harassing the claimant by rejecting his leave applications, deploying at odd places, giving work out of his job profile and letting the claimant jobless for days together. Still the claimant has been continuously discharging his duties till date. The amount which is liable to be recovered from the management based on revised pay on the basis of Majithia Wage Board is legitimate dues of the claimant and as such the claimant is not willing to forego the same in any manner. The claimant has got calculated his estimate revised salary and arrears of pay from a competent Chartered Accountant as per the Majithia Wage Board recommendations w.e.f. 11.11.2011 to 01.02.2021, as such the total amount of ₹ 77,63,917/- including interest @ 18% per annum is due from the management. Despite the demand of detailed arrears of salary calculated as per Majithia Wage Board recommendations w.e.f. 11.11.2011 to 01.02.2021, the management has intentionally and deliberately not been implementing the recommendations of the Majithia Wage Board and has not given any benefit to the claimant in spite of several oral and written requests. The claimant has not signed any declaration in order to waive of the benefits accrued under the Majithia Wage Board recommendations. The management had indulged in the process of denying the claims stating that the recommendations of the wage board were not applicable on the claimant and other employees and forcing the employees to sign on pre-typed formats and declarations illegally. The employees refusing to do so were being victimized by way of illegal transfer, suspension and other colourable exercise of the powers of the management and a reign of terror inside the establishment had been created by the management. The management be asked to furnish the details of the salary paid to the employee of the establishment before 07.02.2014 and being paid now and the reasons for non-implementation of the recommendations of the Majithia Wage Board by the management. The present claim is without prejudice to the rights of the claimant to the Contempt of Court proceedings against the management for its deliberate, willful and intentional violation of the order dated 07.02.2014 of Hon'ble Supreme Court. The cause of action of the claimant is continuous. As such, the present claim is being filed within period of limitation. The claimant has not filed any other claim or petition before any Court of Law except the present one. The claim application is accompanied with calculation sheet Annexure 'A3'. Prayer is made that Award may be passed directing the managements to implement the Majithia Wage Board recommendations and re-fix the pay of the claimant accordingly with further prayer directing the managements to release arrears of pay to the tune of ₹ 77,63,917/- as per Annexure 'A3' with costs and to pay interest @ 18% on the arrears of pay from the date of its accrual till actual payment.

5. On notice, the management No. 1 & 2 contested the claim application by filing joint written statement on 30.07.2021 wherein preliminary objections are raised on the ground that the workman filed the fresh reference claiming re-fixation of pay and for recovery of ₹ 77,63,917/- as arrears of pay up to 01.02.2021 on account of implementation of recommendations of the Majithia Wage Board vide notification dated 11.11.2011 issued by Central Government by putting the wrong facts as well as by levelling the false allegations and by presenting the fabricated calculation sheet before this Tribunal. The claimant does not fall under the definition of the 'workman' as per Section 2(s) (ii to iv) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*). The claimant has failed to claim himself as workman as per the provisions of the ID Act. As per the nature and status of post, the claimant does not fall within the definition of the 'workman' under the ID Act.

The claim statement is liable to be dismissed on account of mis-joinder of the necessary parties as the alleged service rendered by the claimant with the answering management i.e. Chief Manager, HR (who has not been impleaded as party in the present reference) and authorities of Head Office have been impleaded by name. As per the facts, the recommendations of Majithia Wage Board were submitted to the Central Government on 31.12.2010 and same were notified by the Government of India on 11.11.2011. The said recommendations were put under challenge by various media agencies by way of filing the writ petitions before the Hon'ble Supreme Court of India and the said cases were adjudicated upon before the Hon'ble Supreme Court of India in February 2014. The procedure under the scheme of the Act 1955, aggrieved employee seeking to recover any amount under the Act 1955, is required to first move an application before the State Government. As per Rule 36 of the Act 1955, such an application is required to be made in prescribed Form 'C' addressed to the Secretary to the State Government along with the details of the amount claimed, preceded by a 15 days prior notice regarding payment to the concerned newspaper establishment. In this case, the above said requirement of Rule 36 of the Act 1955 has not been complied with. Hence, the proceeding in question is void *ab-initio*. As per Section 17 of the Act 1955, a Civil Suit does not lie after the expiry of 3 years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February 2020 for the benefit claimed by the claimant for the year 2011-2021. The claimant has annexed the calculation sheet showing the turn-over of the management only to get the benefit from the management which is a dispute in question of fact and cannot be decided in summary proceedings before this Tribunal. A dispute in question of fact can only be adjudicated upon by the concerned Civil Court. The basis of computation of the amount claimed has not been indicated by the claimant. The identity of the person who has computed the said amount has not been revealed by the claimant. Hence, the same is frivolous and baseless. The answering managements do have the spirit to honour the judgment delivered by the Hon'ble Supreme Court of India but in the present reference the claimant is not entitled to any benefit in compliance of the judgments delivered by the Hon'ble Supreme of India. No amount is due to the claimant under the provisions of Section 17 of the Act 1955. Further the amount claimed is based on non-existing right. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per para 20(j) of the Majithia Wage Board recommendations. The claimant has voluntarily chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board. Now nothing is payable to the claimant. The claimant had never raised any question nor made any complaint to the management or to any competent authority regarding the undertaking which he had given within the specified time of 3 weeks. Now after lapse of long time the claimant is raising dispute of non-payment of wages as per the Majithia Wage Board recommendations which is a simply after thought, illegal and baseless. The employees were informed about the Majithia Wage Board recommendations and para 20(j) of the same for payment of the existing pay scale and existing emoluments by affixing copy of the Majithia Wage Board recommendations and notice on the notice board of the company. The applicant-claimant had already received the wages as per para 20(j) of the Majithia Wage Board recommendations and has chosen/ opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board recommendations. The management of DB Corp. Ltd. is a group of businesses including textile, MyFM, digital media, real estate, power and denim. As per the Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted.

6. Further on merits, the contents of para 1 to 5, 7 & 8 are replied being matter of record. It is further stated that the claimant is not entitled for the benefit of compliance of judgment passed by the Hon'ble Supreme Court of India. As per the group of the claimant and class of the Newspaper Establishment the claimant is receiving the wages and other benefits more than the Majithia Wage Board recommendations. It is specifically denied that the claimant is entitled for revised salary and pay from the management based on the Majithia Wage Board for the period 11.11.2011 to 01.09.2018. The claimant is not entitled for any financial benefits as

well as interest and the claim put forth by the claimant is not a very higher side. The claim is not maintainable in the question-answer form. No cause of action has accrued to the claimant to file the present claim and the same is hopelessly time barred. Rest of the averments of claim statement are denied as wrong. Prayer is made that the reference may be dismissed with exemplary cost.

7. The claimant filed replication wherein the contents of the written statement except admitted facts are denied being without any basis and frivolous and averments of claim statement are reiterated.

8. From the pleadings of the parties, following were framed vide order dated 16.08.2021:-

1. Whether the arrears of revision of pay to the applicant are to be paid by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the applicant does not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act ? OPM
3. Whether the claim of the applicant is bad on the ground of mis-joinder and non-joinder of necessary parties ? OPM
4. Whether the claim of the applicant is time barred ? OPM
5. Whether the claim of the applicant is not maintainable under the provisions of Section 17 of the Working Journalists & Other Newspaper Employees (Condition of Services) and Miscellaneous Provisions Act, 1955 ? OPM
6. Relief.

9. In evidence the claimant Manjit Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with copy of documents Exhibit 'AW1/1' and Exhibit 'AW1/2'.

Exhibit 'AW1/1' is Gazette Notification dated 11.11.2011 of Government of India, Ministry of Labour & Employment.

Exhibit 'AW1/2' is calculation sheet of estimated gross salary as per Majithia Wage Board prepared by Chartered Accountant Dhruv Gupta.

During cross-examination the management put documents Exhibit 'M1' to Exhibit 'M4' to AW1.

Exhibit 'M1' is copy of declaration dated 15.11.2011.

Exhibit 'M2' is copy of full & final receipt dated Nil issued by the claimant Manjit Singh.

Exhibit 'M3' is copy of declaration / affidavit dated Nil submitted by claimant Manjit Singh.

Exhibit 'M4' is copy of letter dated 23.06.2022 regarding full & final settlement advice along with receipt of gratuity through demand draft No.017734 dated 22.06.2022 drawn on IDBI Bank amounting to ₹ 50,769/- issued by to claimant Manjit Singh.

10. The claimant examined AW2 Dhruv Gupta, Chartered Accountant, who tendered his affidavit Exhibit 'AW2/A' along with documents Exhibit 'AW2/1' to Exhibit 'AW2/3'.

Exhibit 'AW2/1' is copy of appraisal letter dated 30.04.2019 for the financial year 2018-19 issued to claimant Manjit Singh.

Exhibit 'AW2/2' is copy of Form 23-ACA, pursuant to Section 220 of the Company's Act, 1956.

Exhibit 'AW2/3' is the calculation sheet of estimated gross salary as per Majithia Wage Board prepared by Dhruv Gupta, Partner for DGR & Associates Chartered Accountants.

11. The claimant also examined AW3 Avdhesh Gaur, who brought the summoned record and proved the copy of the same Exhibit 'AW3/1' to Exhibit 'AW3/13'.

Exhibit 'AW3/1' is declaration dated 15.11.2011.

Exhibit 'AW3/2' is resignation dated 29.03.2022.

Exhibit 'AW3/3' is letter dated Nil regarding full & final payment receipt.

Exhibit 'AW3/4' is cheque No.684674 dated 23.05.2022 amounting to ₹ 4,428/-.

Exhibit 'AW3/5' is gratuity advice amounting to ₹ 50,769/-.

Exhibit 'AW3/6' is gratuity receipt dated 28.06.2022 amounting to ₹ 50,769/-.

Exhibit 'AW3/7' is declaration / affidavit regarding acceptance of gratuity.

Exhibit 'AW3/8' is demand draft No.017734 dated 22.06.2022 drawn on IDBI Bank amounting to ₹ 50,769/-.

Exhibit 'AW3/9' is revised CTC structure w.e.f. 28.05.2014.

Exhibit 'AW3/10' is annual appraisal dated 29.07.2015 along with compensation details for the year 2014-15.

Exhibit 'AW3/11' is annual appraisal dated 30.08.2018 along with compensation details for the year 2017-1.

Exhibit 'AW3/12' is annual appraisal dated 30.04.2019 along with compensation details for the year 2018-19.

Exhibit 'AW3/13' is requisition letter dated 13.01.2022 relating to transfer of Manjit Singh which was issued during the pendency of the present case.

12. On 02.08.2023 Learned Representative for the claimant closed the evidence of the claimant-workman in affirmative.

13. On the other hand, the managements examined MW1 Avdhesh Gaur - Assistant Manager HR Admn (CPH2), Office of Dainik Bhaskar, Chandigarh who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' to Exhibit 'M10'.

Exhibit 'M1' is identity card of Avdhesh Gaur.

Exhibit 'M2' is authority letter issued in favour of Avdhesh Gaur by DB Corp. Ltd.

Exhibit 'M3' is resignation with acceptance dated 29.03.2022.

Exhibit 'M4' is full & final slip for the month of May 2022.

Exhibit 'M5' is copy of full & final cheque No.684674 dated 23.05.2022 for an amount of ₹ 4,428/- .

Exhibit 'M6' is full & final receipt.

Exhibit 'M7' is gratuity payment advice dated 23.06.2022.

Exhibit 'M8' is demand draft No.017734 dated 22.06.2022 for ₹ 50,769/-.

Exhibit 'M9' is gratuity receipt dated 28.06.2022.

Exhibit 'M10' is declaration dated 15.11.2011.

14. It is pertinent to mention here that Exhibit 'M1' to 'M4' is numbered twice i.e. declaration dated 15.11.2011 is numbered as Exhibit 'M1' and identity card of Avdhesh Gaur of MW1 is numbered as Exhibit 'M1'; full & final receipt dated Nil issued by the claimant Manjit Singh is numbered as Exhibit 'M2' and authority letter issued in favour of Avdhesh Gaur by DB Corp. Ltd. is numbered as Exhibit 'M2'; declaration / affidavit dated Nil submitted by claimant Manjit Singh is numbered as Exhibit 'M3' and resignation dated 29.03.2022 with acceptance is numbered as Exhibit 'M3'; letter dated 23.06.2022 regarding full & final settlement advice along with receipt of gratuity through demand draft No.017734 dated 22.06.2022 drawn on IDBI Bank amounting to ₹ 50,769/- issued by to claimant Manjit Singh is numbered as Exhibit 'M4' and full & final slip for the month of May 2022 is numbered as Exhibit 'M4'. In order to avoid any ambiguity, identity card of Avdhesh Gaur is renumbered and hereinafter referred as Exhibit 'M1/1'; authority letter issued in favour of Avdhesh Gaur by DB Corp. Ltd. is renumbered and hereinafter referred as Exhibit 'M2/1'; the resignation dated 29.03.2022 is renumbered and hereinafter referred as Exhibit 'M3/1' and full & final slip for the month of May 2022 is renumbered and hereinafter referred as Exhibit 'M4/1'.

15. On 25.09.2023 Learned Representative for the management No.1 & 2 closed oral evidence. On 06.11.2023 Learned Representative for management No.1 & 2 closed documentary evidence.

16. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below:-

Issue No. 1:

17. Onus to prove issue No.1 is on the workman.

18. Under this issue, the claimant Manjit Singh examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW1 has supported his oral version with documents Exhibit 'AW1/1' and Exhibit 'AW1/2'.

19. In order to prove the calculation of the arrears claimed, claimant examined AW2 Dhruv Gupta - Chartered Accountant and Partner of the DRG and Associates Firm, who vide his affidavit Exhibit 'AW2/A' has proved that the calculation sheet prepared by him. AW2 has supported his oral version with documents Exhibit 'AW2/1' to Exhibit 'AW2/3' (as detailed).

20. The claimant has examined AW3 Avdhesh Gaur - Assistant Manager, HR Admn. Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh, who proved on record documents Exhibit 'AW3/1' to Exhibit 'AW3/13'.

21. On the other hand, the management has examined MW1 Avdhesh Gaur - Assistant Manager, HR Admn Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh. (MW1 in his testimony referred the management as respondent and in cross-examination of AWs referred the claimant as workman. In order to avoid any ambiguity the workman is hereinafter referred as claimant and the respondent is hereinafter referred as management.) MW1 vide his affidavit Exhibit 'MW1/A' deposed that he is working as Assistant Manager - HR & Admin (CPH2) with the managements and has been authorised by the management to depose on its behalf in this case before this Court. He is well conversant with the facts of the present case. MW1 further deposed that DB Corp. Ltd. is group of businesses including textile, MY FM, Digital Media, Real Estate, Power, Denim. As per Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted and all the units have independent existence and the accounts of each unit are being prepared by that unit. The claimant had concealed the material fact that at the time of leaving the managements after putting the resignation dated 18.04.2021 had accepted all the service benefits and also has received full & final amount from the managements and nothing remaining pending / due and as such the present claimant has no right to contest the present claim petition being not

maintainable. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per Para 20(j) of the Majithia Wage Board recommendations. The claimant has chosen/opted to retain his existing wages and existing emoluments as per Para 20(j) of the Majithia Wage Board at his own voluntarily by signing a declaration dated 15.11.2011 and after signing the declaration, now nothing is payable to the applicant as he has already received wages according to option opted by him as per Para 20(j) and opted to retain his current salary and emoluments at that time. All the employees working have given their signatures on option letter as per their will and submitted it to the management. MW1 further deposed that the claimant is not entitled for the benefit of the compliance of the judgment passed by the Hon'ble Supreme Court of India. MW1 has supported his oral version with documents Exhibit 'M1' to Exhibit 'M10'. It is penitent to mention here that in affidavit Exhibit 'MW1/A' the documents are referred as Annexure 'M1' and Annexure 'M2' which are proved into evidence vide Exhibit 'M1' and Exhibit 'M2' respectively.

22. From the oral as well as documentary evidence led by the parties, it comes out that undisputedly the claimant was appointed as Unit Attendant in the Dainik Bhaskar Newspaper on 23.09.2011. The salary of the claimant was fixed @ ₹ 6,000/- per month including all perks and allowances. After completion of probation period of six months, the services of the claimant were regularised. The fact remained undisputed between the parties that during the pendency of the present case the claimant had tendered resignation in January 2022 which was accepted by the management.

23. In the present case, the claimant is demanding arrears of pay as revised according to the recommendations of the Majithia Wage Board w.e.f. 11.11.2011 to 01.02.2021 as per notification dated 11.11.2011 / Exhibit 'AW1/1'. On the other hand, the managements have taken the plea that in view of the option exercised by the claimant under para 20(j) of the notification dated 11.11.2011, the claimant is not entitled to seek benefits of the Majithia Wage Board recommendations.

24. To my opinion, in order to decide whether para 20(j) of notification dated 11.11.2011 is attracted in this case and for better appreciation para 20(j) of the said notification is reproduced as below:—

"20(j) The revised pay scales shall become applicable to all employees with effect from 1st July 2010. However, if an employee within three weeks from the date of publication of Government Notification under Section 12 of the Act enforcing these recommendations exercises his option for retaining his existing pay scales and "existing emoluments", he shall be entitled to retain his existing scale and such emoluments."

25. Declaration dated 15.11.2011 is put by the management to AW1 in his cross-examination as Exhibit 'M1' and the management proved declaration dated 15.11.2011 vide Exhibit 'M10'. In cross-examination of AW3 declaration dated 15.11.2011 is put as Exhibit 'AW3/1'. Learned Representative for the claimant argued that declaration Exhibit 'M1' / Exhibit 'M10' is not valid in the eyes of law as it does not bear any passing reference of the designation, employee code, department and place of posting etc. The said declaration is not addressed to any official, countersigned or signed by any witness, without verification, acceptance, place not mentioned and not even attested by any notary. There is no passing reference of the existing wages of the claimant, the said declaration is not voluntarily and has been obtained under duress and under threat of transfer / termination. It is also apparent that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant. It is further argued by Learned Representative for the claimant that the declaration is two-sided legal transaction which means there has to be a second party to the declaration. In the present case, the alleged declaration is only signed by the claimant and there is no reference to whom the same is given, furnished. There is no counter-signature of the authority who had accepted it. On the other hand, it is argued by Learned Representative for the managements

that the declaration dated 15.11.2011 i.e. Exhibit 'M1' / Exhibit 'M10' is a valid document and by way of exercising option in the form of above said declaration, the claimant has chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. Therefore, nothing is payable to the claimant as he has already received wages according to the option opted by him under para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. It is further argued by Learned Representative for the management that the declaration Exhibit 'M1' / Exhibit 'M10' is of dated 15.11.2011 and till date the claimant has not withdrawn the same alleging that it was obtained under pressure. Much stress has been laid upon the fact that the claimant has not withdrawn the said declaration as it was genuine and signed by him with his free consent. Learned Representative for the managements referred case law reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G. Diwan** and **2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi**.

26. To my opinion, the argument advanced by the Learned Representative for the claimant that declaration Exhibit 'M1' / Exhibit 'M10' is signed by the claimant under pressure of illegal transfer, suspension is devoid of merits because the claimant / AW1 when put to cross-examination stated that he identifies his signatures on declaration dated 15.11.2011 and copy of declaration is Exhibit 'M1'. AW1 admitted as correct that he has not withdrawn the said declaration. The claimant in cross-examination MW1 has put the suggestion that declaration is ante-dated and was procured in the year 2016, which is denied as wrong by MW1. The claimant's plea that his signatures on the declaration were obtained in the year 2016 is not acceptable as no such plea is raised by the claimant in his claim statement. To the contrary it is pleaded in the claim statement that claimant has not signed any declaration / settlement with any of the managements whatsoever in order to waive off the benefits accrued under the Majithia Wage Board recommendations. In this manner, there is a complete denial of signing any declaration by the claimant in his claim statement. Both the pleas raised by the claimant i.e. non-signing of any declaration and obtaining his signature on declaration in the year 2016 are self-contradictory and destructive to each other. Moreover, till date the claimant has not withdrawn his declaration alleging that same is ante-dated. Besides claimant's own witness AW3 Avdhesh Gaur in his cross-examination stated that Manjit Singh has not withdrawn the declaration dated 15.11.2011 / Exhibit 'AW3/1' till date. From the version of AW1 referred above it is duly proved on record that the declaration dated 15.11.2011 / Exhibit 'M1' / Exhibit 'M10' is signed by the claimant with his free will and consent. Further, Avdhesh Gaur when examined himself as MW1 in his cross-examination stated that he has also given similar declaration while joining the service. His signatures were not obtained on any blank paper by the management at the time of joining of his service. MW1 admitted as correct that all the employees / officials have given the declaration under 20(j) and no one has opted for revised wages as per recommendations of Majithia Wage Board. From the cross-examination of MW1 referred above, nothing favourable to the claimant has come on record.

27. The claimant's plea that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant is also devoid of merits. There is no illegality, even if, the managements for the convenience of its employees supplied a proforma to exercise option under para 20(j) of notification dated 11.11.2011. It is for the concerned employee herein claimant to fill-in the proforma by exercising his own discretion. It is not the requirement of para 20(j) of notification dated 11.11.2011 that the declaration must be countersigned by the employer or second party.

28. From Exhibit 'M3/1' / Exhibit 'AW3/2' it is duly proved on record that the claimant on 29.03.2022 tendered resignation on the ground that he has been transferred from Sirhind (Fatehgarh Sahib) to Hissar and he is not able to join at Hissar as he is ill and not keeping good health, besides condition of his parents is not good and he has the liability to look after his parents. From Exhibit 'M3/1' / Exhibit 'AW3/2' it is duly proved on record that the claimant has tendered resignation due to his inability to join at Hissar and not on account of any threat or pressure of the management. AW3 has proved into evidence the requisition letter dated 13.01.2022 relating to transfer of Manjit Singh, which was issued during the pendency of the present case. AW3 when put

to cross-examination admitted as correct that transfer is part of service jurisprudence and an employee can be transferred from one place to another during his service tenure as per the terms & conditions of the annual appraisal letter Exhibit 'AW3/11'.

29. The claimant has admittedly received his full & final payment after acceptance of resignation. In this regard, AW1 Manjit Singh in his cross-examination admitted as correct that after his resignation in the month of January 2022, he has received his all dues from the management and has executed full & final receipt which bears the signatures and copy of same is Exhibit 'M2'. AW1 further admitted as correct that he has also executed declaration under the signatures towards full & final settlement including all arrears and copy of same is Exhibit 'M3'. AW1 further admitted as correct that the cheque of full & final payment is en-cashed in his favour. AW1 admitted as correct that he has received the amount of gratuity from the management vide payment advice dated 23.06.2022 and copy of same is Exhibit 'M4'. AW1 voluntarily stated that the said full & final payment was not made as per the recommendations of Majithia Wage Board and his signatures were forcibly obtained by the management on Exhibit 'M1' to Exhibit 'M4'. AW1 denied the suggestion as wrong that his volunteer statement is incorrect. To my opinion, the volunteer statement of AW1 that his signatures were forcibly obtained on Exhibit 'M1' to Exhibit 'M4' stands falsified from his further cross-examination wherein he has admitted as correct that he has executed Exhibit 'M1' to 'M4' out of his free will. AW1 further stated that he has not reserved his right to claim benefits of Majithia Wage Board at the time of receiving full & final payment and gratuity from the management. From version of AW1 referred above it is duly proved on record that the claimant has voluntarily exercised option under para 20(j) of the Majithia Wage Board recommendations by way of declaration dated 15.11.2011 / Exhibit 'M1' / Exhibit 'M10' and voluntarily resigned from his service by way of resignation tendered on 29.03.2022. Thereafter the claimant issued receipt of full & final payment Exhibit 'M2' / Exhibit 'M6' (full & final receipt is put to AW1 in his cross-examination as Exhibit 'M2' and proved by MW1 in his examination-in-chief vide Exhibit 'M6') and executed declaration / affidavit towards full & final settlement including all arrears vide Exhibit 'M3' without any protest and without reserving any right to claim benefits of the Majithia Wage Board recommendations. Therefore, the claimant is estopped from seeking the arrears of revised pay as calculated by the Chartered Accountant. The case law reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G. Diwan** and **2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi** are applicable to the present case to an extent.

30. In view of the aforesaid discussion, the claimant is not entitled to receive arrears of revised pay.

31. Accordingly, this issue is decided against management No.1 & 2 and in favour of the claimant-workman.

Issue No. 2 :

32. Onus to prove this issue is on the managements.

33. Learned Representative for the management argued that the claimant does not fall within the definition of the 'workman' as defined under Section 2(s) of the ID Act as the nature of the work assigned to the claimant was supervisory. On the other hand, Learned Representative for the claimant argued that the claimant was not having any managerial or supervisory position. The claimant was not having any power to appoint / dismiss any employee and also had no power to grant leave to any employee. To support his arguments Learned Representative for the claimant referred case law reported in **2006(4) SCT 1** titled as **Anand Regional Co-op. Seedgrowers Union Ltd. Versus Shaileshkumar Harshadbhai Shah** in para 11 to 13 held as below:

"11. For determining the questions as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.

12. *Supervision contemplates direction and control. While determining the nature of the work performed by the employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.*

13. *The precise question came up for consideration in **Ananda Bazar Patrika (P) Ltd. v. Workmen [(1970)3 SCC 248]** wherein it was held :*

"The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity....."

A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.

Judging by the said standard, we are of the opinion that the First Respondent did not come within the purview of the exclusionary clause of the definition of workman. Ananda Bazar Patrika (supra) was followed by the court in large number of cases."

34. In the present case, it is undeniable fact that the claimant was appointed to the post of Unit Attendant. The management has failed to bring on record any oral or documentary evidence to show that the workman was discharging any kind of supervisory or managerial or administrative functions. In the absence of aforesaid evidence, it cannot be said that the claimant was exercising powers of control or supervision. The judgment **2006(4) SCT 1 (supra)** is applicable to the facts of the present case to an extent. Consequently, the management has failed to prove that the claimant had any authority to initiate departmental proceedings against the subordinates or he had power of control or supervision in regard to recruitment, promotion etc. The management even failed to prove that the claimant had authority to sanction leave to any employee. The claimant, therefore, is a 'workman' as defined under Section 2(s) of the ID Act.

35. Accordingly, this issue is decided against management No.1 & 2 and in favour of the claimant-workman.

Issue No. 3 & 5:

36. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

37. Onus to prove both these issues is on the managements. During course of arguments both these issues are not pressed by the managements.

38. Accordingly, both these issues are decided against management No. 1 & 2 and in favour of the claimant-workman.

Issue No. 4:

39. Onus to prove this issue is on the managements.

40. Learned Representative for the managements contended that the claim statement is time barred. A Civil Suit does not lie after the expiry of three years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February 2020 for the benefit claimed by the claimant for the year 2011 to 2021. On the other hand, Learned Representative for the claimant argued that the claimant is seeking his revised pay w.e.f. 01.11.2011, amount of interim relief and arrears of pay with interest @ 18% per annum as per the award given on the recommendations of Majithia Wage Board. On every passing month, the claimant was getting less salary than his due entitlement and on every month a fresh cause of action had arisen in favour of the workman. Whereas the reference to this Tribunal was made by the Assistant Labour Commissioner, U.T. Chandigarh on 04.09.2020. Thus, the claim of the claimant is well within time in as much as the cause of action in the present case is recurring in nature.

41. As proved from the documents on judicial file, the claim raised the application under Section 17(1) of the Act 1955 before the Assistant Labour Commissioner, U.T. Chandigarh on 14.02.2020 and the Worthy Secretary Labour, Chandigarh Administration under Section 17(2) of the Act 1955 referred to present dispute for adjudication to this Tribunal /Court vide reference dated 04.09.2020. Moreover, the contention raised by Learned Representative for the claimant carries force as denial of revision of pay and benefits of arrears of pay is a continuing cause giving rise to a recurring cause of action. Therefore, the bar of limitation does not apply.

42. Accordingly, this issue is decided against management No.1 & 2 and in favour of the claimant-workman.

Relief :

43. In the view of foregoing finding on the issue No.1 above, this reference is declined and answered against the claimant-workman. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 06.11.2023.

Secretary Labour,
Chandigarh Administration.

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Notification

The 15th February, 2024

No. 41.—In exercise of the powers vested in them by Section 139 (b) of the Code of Civil Procedure, 1908; Section 297(1)(b) of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) and Section 3(2)(a) of the Oaths Act, 1969 (Act No. 44 of 1969), Hon'ble the Chief Justice and Hon'ble Judges are pleased to appoint:

Sr. No	Name of the Advocates/ Father's Name/ Place for which applied for	Remarks
1	Sh.Ajit Singh Trikha, s/o Sh.Manohar Lal, High Court Premises	For a period of two years from the date of notification, subject to the curtailment, if any.

as Oath Commissioner for administering oaths and affirmations to the deponents of affidavits under the provisions of the aforesaid Acts in accordance with the terms specified in Rule 5, Chapter 12-B of the High Court Rules and Orders, Volume-IV.

BY ORDER OF HON'BLE THE CHIEF JUSTICE AND HON'BLE JUDGES

(Sd.) . . .,

Assistant Registrar (Rules),
for Registrar General.

CHANGE OF NAME

I, Rijul, S/o Sanjay Kumar Srivastava, R/o H. No. 21, Vill. Lahora Khudda, Chandigarh, have changed my name to Rijul Kumar Srivastava.

[209-1]

I, Sanjay Kumar, S/o Late S.P. Srivastava, R/o H. No. 21, Vill. Lahora Khudda, Chandigarh, have changed my name to Sanjay Kumar Srivastava.

[210-1]

I, Veena, W/o Sanjay Kumar Srivastava, R/o H. No. 21, Vill. Lahora Khudda, Chandigarh, have changed my name to Veena Srivastava.

[211-1]

I, Ram Bahadur Yadav, S/o Jagan Nath, # 3512, Sector 22-D, Chandigarh, have changed my name to Ram Bahadur.

[212-1]

I, Ram Singh, S/o Amar Bahadur Yadav, R/o H. No. 1118-C, Small Flats Dhanas, UT, Chandigarh, have changed my name from Ram Singh to Ram Singh Yadav.

[213-1]

I, Saroj Chaudhary, W/o Rajesh Kumar, R/o # 156, Police Station East Complex, Sector 26, Chandigarh. I have changed my name from Saroj Chaudhary to Saroj Bala.

[214-1]

I, Mohammed Ahsan, S/o Altaf Khan, # 55, Kachi Colony Dhanas, Chandigarh, have changed my name to Ahsan Khan.

[215-1]

I, Suvinder Singh *alias* Subinder Singh, S/o Jabar Singh, # 7, Sector-2, Chandigarh, have changed my name to Suvindar Singh.

[216-1]

I, Jainab, W/o Mohd Reezwan, R/o 32-B, Small Flats, Dhanas (Chandigarh), have changed my name from Jainab to Jenab.

[217-1]

I, Mohd. Rizwan, S/o Mohd. Farook, R/o 32-B, Small Flats, Dhanas (Chandigarh), have changed my name from Mohd. Rizwan to Mohd. Reezwan.

[218-1]

I, Badal, S/o Rampal Shile, R/o # 2266, Phase-2, Ram Darbar, Chandigarh, have changed my name to Badal Shile.

[219-1]

"No legal responsibility is accepted for the contents of publication of advertisements/public notices in this part of the Chandigarh Administration Gazette. Persons notifying the advertisements/public notices will remain solely responsible for the legal consequences and also for any other misrepresentation etc."